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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,939	12/21/2000	Luc Francois Descamps	Q62126	7321

7590 03/15/2004

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EXAMINER	
TRAN, QUOC DUC	
ART UNIT	**PAPER NUMBER**
2643	18

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/740,939	DESCAMPS ET AL.	
	Examiner	Art Unit	
	Quoc D Tran	2643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *see attachment*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.
8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Quoc D. Tran

Advisory Action

Response to Arguments

1. Applicant's arguments filed 3/2/2004 have been fully considered but they are not persuasive.

In response to applicant argument that the finality of the present Office Action should be withdrawn because the Amendment filed on 5/9/2003 (Paper # 15) does not necessitate new subject matter. Applicant merely amended the claims (i.e., 1 and 18) to include the subject matter of the canceled claim 2. Accordingly, the examiner respectfully disagrees with applicant argument. The amended subject matter filed on 5/9/2003 recites, "Wherein the generating is performed so that the frequency bands of the ***adjacent ones*** of the plurality of pulses overlap". The subject matter (i.e., "***adjacent ones*** of the plurality of pulses overlap") was never introduces in any of the previously claims limitation. Thus, the amended claims are not merely include the subject matter of claim 2. Therefore, finality is proper and shall be sustained.

In response to applicant's argument on pages 8-9 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant argument that Cabot teaches does not appear to desire overlapping and that Cabot teaches away from the overlapping. Accordingly, the examiner

disagrees with applicant. Cabot suggested that it is not desirable to have overlapping with ***opposing phases.*** Nowhere in Cabot suggest that overlapping is not desired. In fact, Cabot clearly suggested that it is desirable but not necessary for interpolated signals since it is easier to read and estimate between test tones (see col. 6). Therefore, Cabot does not teach away from overlapping.

In response to applicant argument that no point in Cabot describing that the plurality of pulses are practically flat. Accordingly, the examiner disagrees with applicant argument. Figure 6B of Cabot clearly shown such. Therefore, Cabot read on applicant limitation as claimed.

In response to applicant argument that there is no indication in Wallance suggesting that each of the pulses is provided with amplification or attenuation. Accordingly, the examiner disagrees with applicant argument. Column 4 of Wallance suggest of an ***amplifier*** that receives the test tone signal for the line under test. This clearly read on applicant limitation as claimed.

2. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Facsimile responses should be faxed to:
(703) 872-9306

Hand-delivered responses should be brought to:
Crystal Park II, 2121 Crystal Drive
Arlington. VA., Sixth Floor (Receptionist)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Quoc Tran** whose telephone number is **(703) 306-5643**. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Curtis Kuntz**, can be reached on **(703) 305-4708**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600** whose telephone number is **(703) 306-0377**.

Quoc D. Tran
Patent Examiner AU 2643
March 13, 2004